

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 00-0032P

**Sales & Use Tax
Calendar Year 1995**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on a sales tax assessment resulting from a Department audit conducted for the calendar year 1995.

The taxpayer is a large pharmaceutical manufacturer. The taxpayer's personnel call on physicians in the state and provide sample drugs in the hope the physician prescribes the drug. In addition, physicians in the state perform clinical trials on new drugs being developed. The taxpayer maintains some cold-storage inventory in the state.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the negligence penalty should be waived as the taxpayer performed their tax duties in a good faith manner and the error in the audit was inadvertent.

The Department points out the error was the result of the unintentional failure of the taxpayer to prepare an amended return, and, the issue was an issue in the prior audit. Furthermore, the error was material.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary

reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer’s penalty protest is denied.